

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

WEDNESDAY, THE 29TH NOVEMBER 2006 / 8TH AGRAHAYANA 1928

WP(C).No. 18854 of 2006(T)

PETITIONER:

1. P.NEELAKANTA PILLAI, (ASSISTANT
EXECUTIVE ENGINEER RETIRED FROM KSEB, SUB REGIONAL
STORE, ELECTRICAL CIRCLE, PALAI),
RESIDING AT PERUMBRAKUNNEL HOUSE, CHIRAKKADAVU
EAST P.O., KOTTAYAM DISTRICT.
2. ISSAHAC.V., (OVERSEER RETIRED FROM
KSEB, 66 KV SUB STATION, VANDIPERIYAR),
RESIDING AT MAPPILAKUDY HOUSE, KUMILY P.O.,
IDUKKI DISTRICT.

BY ADV. SRI.WILSON URMESE

RESPONDENTS:

1. KERALA STATE ELECTRICITY BOARD
REPRESENTED BY ITS SECRETARY, VYDHUTHI BHAVAN,
PATTOM PALACE P.O., THIRUVANANTHAPURAM.
2. THE CHAIRMAN, KSEB, VYDHUTHI BHAVAN,
PATTOM PALACE P.O., THIRUVANANTHAPURAM.
3. THE CHIEF ENGINEER,
(HRM) KSEB, VYDHUTHI BHAVAN,
PATTOM PALACE P.O., THIRUVANANTHAPURAM.

BY ADV. SRI.K.S.ANIL, SC, KSEB

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 29/11/2006, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K.K.DENESAN, J.

WP(C)No. 18854 OF 2006

Dated this the 29th November, 2006.

JUDGMENT

The petitioners are retired officers of the first respondent-Board. The first petitioner retired from the post of Assistant Engineer on 31.5.2004 and the second petitioner retired from the post of Overseer on 30.11.2002. Based on complaints received by the respondent-Board, Exts. P2 and P3 memo of charges were issued to the first petitioner and the second petitioner respectively while they were in service. Th charges framed against the petitioners were that they had accepted Rs.22,000/- from one Kunjukutty Madakkayil, Vallakadavu, consumer No: 7570/VPR for giving service under OYEC scheme and had deliberately allowed consumer No: 1365/VPR to consume unauthorised additional load. The petitioners filed written statement of defence denying the charges. It appears that an enquiry was conducted into the allegations and a report was furnished by the enquiring authority. Based on the report thus received, Ext.P7 show cause notice was issued to the petitioners directing them to show cause, based on the findings entered by the enquiring authority and provisionally agreed upon by the disciplinary authority, why a penalty of barring of one increment with

cumulative effect and recovery of Rs.67,500/- being the loss sustained by the Board on account of unauthorised additional load to consumer Nos: 1386, 1366 and 1368/VPR shall not be passed. The petitioners submitted their representations against the show cause notice taking up various contentions. Ultimately the third respondent passed Ext.P9 order in the case of the first petitioner and Ext.P10 in the case of the second petitioner. The operative part of Ext.P9 reads as follows:-

"Therefore, the undersigned confirm the proposed punishment and Shri. P.Neelakanda Pillai, Assistant Executive Engineer is hereby awarded a punishment of barring his last one increment with cumulative effect and recovery of any amount of Rs.67,500/- being the proportionate loss sustained by the Board.

Since Shri. P.Neelakanda Pillai, Assistant Executive Engineer has retired from service on superannuation on 31.5.2004, it shereby ordered that the amount equivalent to barring his last increment with cumulative effect plus the loss of Rs.67,500/- may be recovered from his DCRG. The period spent under suspension by him, will be treated as eligible leave if he so desires or as leave without allowance which will not count for any other purpose."

and the operative of Ext.P10 reads as follows:-

"Therefore, the undersigned confirm the proposed punishment and Shri.V.Issahac, Overseer is hereby awarded a punishment of barring his last one increment with cumulative effect plus the loss of Rs.67,500/- being the proportionate loss sustained by the Board.

Since Shri. V.Issahac, Overseer has retired from service on superannuation, the undersigned

hereby order that the amount equivalent to barring his last increment with cumulative effect plus the loss of Rs.67,500/- may be recovered from his DCRG. The period spent under suspension by him will be treated as eligible leave if he so desires or as leave without allowance which will not count for any other purpose."

The first petitioner filed appeal before the second respondent which was disposed of by Ext.P12 order. As against the loss quantified by the disciplinary authority viz., Rs.67,500/- the appellate authority found that the total loss assessed would come to Rs.81,000/- but a sum of Rs.32,400/- was remitted by the consumers and after deducting that amount and apportioning the liability to be accounted by the first petitioner, the amount to be deducted from his terminal benefits would be Rs.24,300/-.

2. Feeling aggrieved, the petitioners have filed this writ petition.

3. I think this Court need seriously consider the contentions urged on behalf of the first petitioner only though this is a writ petition jointly filed by the two petitioners. The second petitioner, admittedly, has not filed any appeal against the order passed by the disciplinary authority viz., the third respondent. Having acquiesced to the order passed by the disciplinary authority and having not availed the statutory remedy, his prayer for quashing the original order of the third

respondent does not deserve to be entertained. Therefore the writ petition as far as the second petitioner is concerned will stand dismissed.

4. As far as the first petitioner is concerned, I find substance in the contentions urged on his behalf. The first petitioner retired from service on 31.5.2004. The order of the disciplinary authority finding him guilty and imposing the penalty on him was passed as per Ext.P9 order dated 3.8.2004. As on the date of Ext.P9, the first petitioner was no more an employee of the respondent-Board. The question of imposing penalty would arise only on an employee of the Board and not a person who has ceased to be an employee. The law on this point is well settled by the decisions of the apex Court as well as of this Court. The employer is competent to wield the disciplinary power over an employee but not on a former employee. Here the *vinculum juris* was broken on 30.5.2004 when the first petitioner retired from service. From 1.6.2004 onwards he is a pensioner and not an employee. Rule 11 of Kerala Civil Services (Classification, Control and Appeal) Rules 1960, which rules have been adopted by the Board, says that penalty may be imposed on a government servant. Since the Board has adopted the above disciplinary rules, wherever the expression 'government servant' occurs the same shall

be read mutatis mundatis and understood as Board employee, and therefore, the penalty cannot be imposed on a person who is not an employee of the respondent-Board. Ext.P9 order is without jurisdiction and is liable to be set aside. Counsel for the respondent-Board contends that this Court has laid down the law that even after the retirement of an employee the benefits equivalent of the increment withheld can be recovered from the terminal benefits. It is true that in case where the penalty has been imposed prior to the date of retirement of the employee, that part of the penalty which the employee did not suffer during the tenure of his service can be quantified in terms of money, if that is possible, and recover the same from the terminal benefits.

5. Counsel for the respondent-Board contends that even assuming that a penalty in the nature of withholding of increment cannot be imposed on the retired employee, the Board has got the right to recover the loss caused to the Board on account of the lapses, negligence or breach of orders by the employee. Learned counsel refers to Rule 3 of Part III K.S.R. Of course the above contention, as a proposition of law, is well founded. But in this case the above proposition cannot be applied to the advantage of the respondent-Board because at no point of time the first

petitioner was informed that loss was caused on account of his omissions as an employee. Though in Ext.P7 show cause notice reference is made to certain pecuniary loss, details relating to the quantification of that amount are not seen mentioned. In fact, it is not a show cause notice directing the petitioner to remit the alleged loss. Moreover, the recovery ordered is a penalty pursuant to disciplinary action. It follows that the procedure prescribed in Rule 3 of Part III K.S.R has not been followed in the case of the first petitioner.

6. In the result Exts.P9 and P12 orders are set aside in so far as the first petitioner is concerned. Terminal benefits due to the first petitioner shall be paid to him within two months on his producing a copy of the judgment. As far as the second petitioner is concerned, the amount after deducting the liability fixed against him as per the impugned orders shall be disbursed to him.

W.P.(C) is disposed of, as above.

K.K.DENESAN
Judge